



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0760]

RIN 1625-AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District; Expiration of Stay (Suspension) and Administrative Changes

AGENCY: Coast Guard, DHS.

ACTION: Interim rule; request for comments.

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**SUMMARY:** Through this interim rule, the Coast Guard is providing administrative changes to the existing reporting requirements under the Regulated Navigation Area (RNA) applicable to barges loaded with certain dangerous cargoes on the inland rivers in the Eighth District area of responsibility. The current stay of reporting requirements under the RNA is scheduled to expire on December 31, 2015. This interim rule limits the reporting requirements in that rule for an interim period while also requesting comments before proposing or finalizing any long term or permanent revisions to the existing reporting requirements.

**DATES:** This interim rule is effective beginning January 1, 2016. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. See SUPPLEMENTARY INFORMATION for details on enforcement and compliance.

**ADDRESSES:** The docket for this interim rule and request for comments, [USCG-2013-0760] is available at <http://www.regulations.gov>. You may submit comments identified by docket number USCG-2013-0760 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** For information about this document e-mail the Coast Guard via Shelley R. Miller at [Shelley.R.Miller@uscg.mil](mailto:Shelley.R.Miller@uscg.mil) or Captain Paul E. Dittman at [Paul.E.Dittman@uscg.mil](mailto:Paul.E.Dittman@uscg.mil) or call the Coast Guard at 504-671-2330.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CDC	Certain Dangerous Cargo
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
IRVMC	Inland River Vessel Movement Center
NOI	Notice of intent
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
RNA	Regulated navigation area
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The reporting requirements under 33 CFR 165.830, “Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District,” were initially suspended (“stayed”) in January 2011 due to the expiration of the contract for the Inland River Vessel Movement Center (IRVMC). The IRVMC was the Coast Guard office responsible for collecting the information required by the regulated navigation area (RNA) at § 165.830. Upon expiration of the contract for the IRVMC, the Coast

Guard was not able to receive and process reports. Therefore, the suspension of reporting requirements was published in the **Federal Register** on January 10, 2011 and was due to expire on January 15, 2013 (76 FR 1360). On January 2, 2013 the Coast Guard extended the suspension through September 30, 2013 (78 FR 25) and on October 1, 2013 the Coast Guard extended the suspension once again through December 31, 2015 (78 FR 60216).

In January 2015 the Coast Guard published a final rule, titled Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System (80 FR 5282). This rule implemented new and updated Notices of Arrival (NOA) reporting requirements under 33 CFR 160 Subpart C, providing an exemption, at 33 CFR 160.204(a)(3), for any vessel required to report movements, its cargo, or the cargo in barges it is towing under 33 CFR 165.830 after December 31, 2015. This rule, which was initially proposed in 2008 before the RNA reporting requirements were suspended, relied on the existing reporting requirements at 33 CFR 165.830 to support the exemption. Starting on January 1, 2016, a vessel would only be eligible for the exemption if it is required to report its movements or cargo as specified in § 160.204(a)(3).

On November 24, 2015, the Coast Guard published a notice of intent (NOI) informing the public that the stay would expire on December 31, 2015, and that reporting would resume in a limited form (80 FR 73156). This rule makes changes to limit the suspended reporting requirements, which would otherwise come into effect in full on January 1, 2016.

Also relevant to this interim rule and request for comments is the portion of the January 2015 rule requiring that all vessels engaged in the movement of Certain Dangerous Cargos (CDC) have Class A Automatic Information System (AIS) beginning in March 2016, pending Office of Management and Budget (OMB) approval of a collection of information associated with that regulatory requirement. These AIS requirements provided under 33 CFR 164.46, if enforced, may

provide an alternative method of reporting that could potentially satisfy the requirements under 33 CFR 165.830 and qualify these vessels for the 33 CFR 160.204(a)(3) exemption. As indicated in the **Federal Register** publications establishing and extending the RNA suspension, during the suspension periods, the Coast Guard assessed potentially modifying the reporting required under the RNA and potential suitable alternative Coast Guard offices and programs to receive and disseminate the reported information. The new AIS requirement, once in full effect, will still be assessed as a potential alternative reporting method. At this time, the Coast Guard has determined that using already-established Coast Guard offices and units centralized at the Eighth District level to receive required reports is the appropriate interim solution to resume the reporting requirements necessary for both maritime domain awareness and to satisfy the exemption in 33 CFR 160.204(a)(3). This interim rule provides the necessary administrative changes to the existing reporting requirements, requiring reporting in a limited form while also requesting comments to better assess a potential permanent reporting system.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this interim rule to limit the RNA reporting requirements that will come into effect after December 31 when the stay of § 165.830 expires. This rule is necessary to stay compliance with certain provisions of the existing rule, and to make administrative changes replacing the references to IRVMC, which is no longer operational. The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, the same authority providing for the initial establishment of the RNA.

The Coast Guard is issuing this interim rule without prior opportunity to comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity

to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule for several reasons. It is unnecessary to publish an NPRM because this interim rule makes only administrative changes to the existing RNA regulation under 33 CFR 165.830, and does not propose or establish new restrictions or requirements. This interim rule merely stays compliance with portions of an existing requirement, allowing select existing provisions to resume upon expiration of a stay in effect through December 31, 2015 and makes the administrative changes necessary to redirect reporting from the IRVMC to the District. Additionally, publishing an NPRM was impracticable because of the relatively short time between the publication of the NOA final rule and the expiration of the stay, as well as the uncertain enforcement date of certain provisions of the AIS portion of that rule. These circumstances did not allow adequate time to develop an NPRM, solicit and consider public comment, and develop and publish a final rule before the expiration of the stay. Instead, the Coast Guard is soliciting public comment with this interim rule while it is in effect and while the AIS requirement will be in effect, if that information collection is approved by OMB, so that the public’s experience with this interim rule and the AIS requirement can be reflected in public comments.

This interim rule is effective January 1, 2016. We forgo the 30-day delay in effective date, under the authority of 5 U.S.C. 553(d)(1) to the extent it relieves the reporting obligations that would otherwise come into effect upon the December 31, 2015 expiration of the stay, and under 5 U.S.C. 553(d)(3) because the Coast Guard finds that the imminent expiration of the stay constitutes good cause for forgoing the 30-day delay of effective date. The Coast Guard published a NOI on November 24, 2015 informing the public that it intended to allow the stay suspending

reporting requirements under this RNA to expire on December 31, 2015 as published, and that reporting would resume in a limited form upon such expiration. Delaying the effective date of this interim rule to provide a 30 day notice – in addition to the notice provided by the NOI – would be impracticable and contrary to public interest because a January 1, 2016, effective date is necessary to avoid submission of reports to the IRVMC which is no longer in operation.

#### **IV. Discussion of the Interim Rule**

The Coast Guard's suspension of reporting requirements under 33 CFR 165.830 will expire as scheduled, in part, on December 31, 2015. On January 1, 2016, reporting requirements under 33 CFR 165.830 will become effective in a limited form. The Coast Guard is not reinstating reporting, 24 hours per day, 365 days per year, at 90-plus reporting points under the existing RNA currently published in the CFR. Under revisions made by this interim rule, reporting requirements will be enforced only when directed by the District Commander or a designated representative. This rule does not change the type of information to be reported.

This interim rule makes administrative changes that remove or revise references to the IRVMC, as it is no longer operational, and replace them with the new Coast Guard office, the Eighth District CDC Reporting Unit (D8 CDCRU), which when activated will be responsible for collecting reported information. The entities required to report, and the information required, remain the same. However, reporting is required only as directed by the District Commander or a designated representative, based on assessment of prevailing safety and security conditions to ensure and enhance maritime domain awareness. In effect, the Coast Guard is allowing existing paragraphs (d)(1)(ix), (d)(2)(iv), (f)(9), and (g)(4) to come into effect, with administrative changes to accommodate the closure of IRVMC. We will continue to use the reporting points listed in

paragraph (e) to describe where reporting is required. This rule “stays” (suspends) compliance with the other existing reporting requirements.

The District Commander or designated representative will inform vessel operators and fleeting facilities when and where reporting is required, by using established coordination and communication mechanisms already in place and which are used to alert these same vessel operators and fleeting facilities of an increase in Maritime Security level. These notice mechanisms include, but are not limited to, coordination with industry trade organizations, Notices of Enforcement, Marine Safety Information Bulletins, and email notifications.

Reports required under this RNA may be provided via e-mail at [d08-smb-cdcru@uscg.mil](mailto:d08-smb-cdcru@uscg.mil). Alternative reporting contact methods, including telephone and fax numbers, will be provided in the notification from the District Commander or designated representative. Additionally, paragraph (h) allows for alternative methods to be submitted for approval by the District Commander. These are the same type of reporting methods listed in the current RNA at 33 CFR 165.830(d)(4), however there will not be a dedicated web link. The information required to be reported, is not changed by this interim rule.

The Coast Guard chose to suspend, rather than remove, several paragraphs of the existing rule in order to evaluate their necessity and to retain the ability to reinstate them (using appropriate administrative processes) if necessary. All public comments are welcome, but we specifically solicit comment on the following: the appropriate type and frequency of reporting related to CDC barges in D8; the potential to use AIS to satisfy reporting goals; and the extent to which complying with the AIS rule would render this rule unnecessary.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s)

related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

No new requirements are established or imposed by this rule. This interim rule suspends compliance with certain provisions of an existing regulation that will come into effect when the current stay expires on December 31, 2015 thereby continuing to relieve a reporting obligation while the Coast Guard solicits public comment regarding appropriate reporting. As a result, the currently-stayed requirement will resume only in a limited form. The rule also makes administrative changes affecting which Coast Guard entity directs and receives reporting. None of these changes will have a significant impact on regulated entities.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small



entities. While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule does not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The existing collection is approved by the Office of Management and Budget under OMB control number 1625-0105.

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial

direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves administrative changes to

resuming reporting requirements in a limited form under an established RNA. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. This interim rule limits the existing, suspended, 24 hours a day, 7 days a week, 365 days a year reporting requirement throughout the entire RNA to require reporting only when and where directed by the District Commander, reducing the time frame and area that the reporting requirements are enforced. An environmental analysis checklist and categorical exclusion determination are not required. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **VI. Public Participation and Request for Comments**

We view public participation as essential, and will consider all comments and material received during the comment period. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this interim rule as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or additional publications or supplemental information is provided.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.830:

- a. Revise paragraph (b);

b. In paragraph (c), remove the words “Inland River Vessel Movement Center or (IRVMC)” and add in their place the words “Eighth District CDC Reporting Unit or (D8 CDCRU)”;

- c. In paragraph (d) introductory text, remove the words “Inland River Vessel Movement Center (IRVMC)” and add in their place the words “Eighth District CDC Reporting Unit Eighth District (D8 CDCRU)”;
- d. In paragraphs (d)(1) introductory text and (d)(1)(ii), remove the text “IRVMC” and add, in its place, the text “D8 CDCRU”;
- e. In paragraph (d)(1)(ix), remove the text “IRVMC” and add in its place the text “District Commander or designated representative”;
- f. In paragraph (d)(2) introductory text, remove the text “IRVMC” and add in its place the text “D8 CDCRU”;
- g. In paragraph (d)(2)(iv), remove the text “IRVMC” and add in its place the text “District Commander or designated representative”;
- h. Revise paragraph (d)(4).
- i. In paragraphs (e), (f) introductory text, and (g) introductory text and the headings to tables 165.830(f) and 165.830(g), remove the text “IRVMC” and add in its place the text “D8 CDCRU”;
- j. In paragraphs (f)(9) and (g)(4), remove the text “IRVMC” and add in its place the text “District Commander or designated representative”;
- k. In paragraph (i), remove the text “the IRVMC” and add in its place the text “designated representative”; and
- l. Amend § 165.830 by removing all other occurrences of the text “IRVMC” and adding, in its place, the text “D8 CDCRU”.

The revisions read as follows:

**§ 165.830 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eight Coast Guard District.**

\* \* \* \* \*

(b) *Enforcement and applicability.* (1) Beginning January 1, 2016, reporting requirements under this RNA will be enforced only when directed by the District Commander or designated representative under paragraphs (d)(1)(ix), (d)(2)(iv), (f)(9), and (g)(4) of this section. Reporting points as listed in paragraph (e) of this section may be used to determine and inform where reporting is required. Compliance under other parts of this section is stayed until a future date published in the Federal Register, if determined necessary.

(2) This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

- (i) Towing vessel operators responsible for barges not carrying CDCs barges, or
- (ii) Fleet tow boats moving one or more CDC barges within a fleeting area.

\* \* \* \* \*

(d) \* \* \*

(4) When required, reports under this section must be made either by e-mail at d08-smb-cdcru@uscg.mil or via phone or fax as provided in the notification as directed by the District Commander or designated representative through the D8 CDCRU. Notification of when and where reporting is required may be made through Marine Safety Information Bulletins, Notices of Enforcement, e-mail and/or through industry outreach. At all other times, reporting under this section is not required and communications should be directed to the Captain of the Port.

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Dated: December 8, 2015

D. R. Callahan,  
Rear Admiral, U.S. Coast Guard,  
Commander, Eighth Coast Guard District  
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